

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

DONALD C. HUTCHINS)
Plaintiff)
v.) Civil Action: **04-30126-MAP**
CARDIAC SCIENCE, INC.)
Defendant)

)

**AMENDED MEMORANDUM OF LAW IN SUPPORT OF
PLAINTIFF'S MOTION FOR JOINDER UNDER
R. 19(a)(1) AND R. 19(a)(2)(ii) OF CIVIL PROCEDURE**

The Plaintiff, Donald C. Hutchins files this memorandum in support of the Plaintiff's Motion For Joinder Under R. 19(a)(1) and R. (a)(2)(ii) of Civil Procedure.

I. SUMMARY OF POSITION

Defendant's Memorandum Of Law in Opposition To Plaintiff's Motion To Dismiss For A Temporary Restraining Order was filed with the Court August 20, 2004. Paragraph II of this Memorandum clearly states:

“There is no ongoing transfer of “lock-up” shares form Cardiac Science to Complainant pursuant to the lock-up agreement and thus nothing to enjoin. The shares were transferred at the outset, and the lock-up agreement merely prevents Complainant from selling all of its acquired shares at once. (Exhibit 1, p.1 ¶ 4). Complainant can only sell its shares according to a prescribed schedule in the lock-up agreement. (Exhibit 1, p.10). Any order to prevent the transfer of shares pursuant to the lock-up agreement would therefore have to be issued against Complainant, a non-party to this action.”

At the Hearing of September 9, 2004 Cardiac Science pleaded that remedies for certain allegations contained in Hutchins' Complaint could only come from the

Compliant Corporation and the Court agreed. It is imperative that the Compliant Corporation be joined to this action as a defendant so that complete relief is accorded among those parties already joined. The Court suggested that Hutchins must follow Local Rule 15.1, *Addition Of New Parties*, to meet the procedural requirement for adding the Compliant Corporation as a defendant. This amended Motion meets that requirement of Local Rule 15.1 with a certificate herein attached stating that it has been served in advance on the new party as required by this rule.

II. ARGUMENT

The standard used to consider a request for joinder is found in Rule 19 of the Code of Civil Procedure. The tests are:

“(1) in the person’s absence complete relief cannot be accorded among the parties or (2) the person claims an interest relating to the subject of the action and is so situated that the disposition of the action in the person’s absence may (i) as a practical matter impair or impede the person’s ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of the claimed interest.”

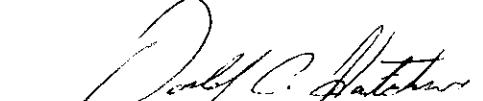
Hutchins and Cardiac Science meet the test that in absence of Compliant Corporation relief can not be accorded among the parties.

Cardiac Science and Hutchins meet the test that in the absence of Compliant Corporation both will be subject to inconsistent obligations by reason of the claimed interest.

CONCLUSION

For all of the foregoing reasons, the Plaintiff's Motion to order the Complient Corporation to be made a party to Civil Action: 04-30126-MAP should be granted.

The Plaintiff
Donald C. Hutchins, Pro Se



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Dated: September 10, 2004